

CDE DRAFT 6/6/11

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

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UNITED STATES OF AMERICA and  
THE STATE OF NEW JERSEY

Plaintiffs,

v.

CORNELL-DUBILIER ELECTRONICS,  
INC. and FEDERAL PACIFIC ELECTRIC  
COMPANY,

Defendants.

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Civil Action No.

**CONSENT DECREE**

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## **I. BACKGROUND**

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), the National Oceanic and Atmospheric Administration of the United States Department of Commerce (“NOAA”), and the Fish and Wildlife Service of the United States Department of the Interior (“DOI”), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended (“CERCLA”), seeking reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Cornell-Dubilier Electronics Superfund Site in South Plainfield, Middlesex County, New Jersey (the “Site”), and seeking natural resource damages.

B. The State of New Jersey (the “State”) has also filed a complaint against the defendants and the United States in this Court alleging that the defendants are liable to the State under Section 107 of CERCLA, 42 U.S.C. § 9607, and under the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 *et seq.*, the Industrial Site Recovery Act, N.J.S.A. 13:1K6 *et seq.*, and the common law of nuisance, negligence and strict liability, all with respect to the Site. The State in its complaint seeks reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Site, and seeks natural resource damages.

C. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on July 28, 1998. 63 Fed. Reg. 40182-01.

D. From 1994 through 1998, EPA sampled the soil, sediment, buildings and air at the

Site. On March 31, 1999, in response to a release or a substantial threat of a release of a hazardous substance at or from the Site, EPA commenced a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

E. On or about September 30, 2003, EPA issued a Record of Decision ("ROD") for Operable Unit 1 ("OU 1 ") of the Site, selecting a remedial action for contaminated residential, commercial and municipal properties in South Plainfield, in the vicinity of the former Cornell-Dubilier Electronics ("CDE") facility (the "Facility") located at 333 Hamilton Boulevard, South Plainfield, New Jersey. The OU1 remedy consists of excavating soil with concentrations of polychlorinated biphenyls ("PCBs") in excess of 1 part per million ("ppm") and disposing of it off-Site, interior cleaning to remove PCB-contaminated dust, and the investigation of additional properties in a defined study area during the remedial design phase to determine which, if any, additional properties will require remediation.

F. On or about September 30, 2004, EPA issued a ROD for OU 2 of the Site. The OU 2 remedy addresses contaminated soils and buildings at the Facility. It calls for demolition of the Facility buildings, excavation and off-Site disposal of buried capacitors and some of the contaminated soils, on-Site treatment by thermal desorption of contaminated soils, and capping of the remainder. EPA has completed the building demolition, excavation and off-Site disposal of the buried capacitors and associated soils, and thermal desorption, and anticipates that the final steps of the OU 2 remedy, including off-Site disposal of soil that could not be treated, and capping, will be completed in 2012.

G. EPA is performing the RI/FS for OU 3 (addressing contaminated Site groundwater) and OU 4 (addressing contaminated soil and sediments in the Bound Brook).

H. As of February 28, 2011, EPA had incurred response costs at the Site of at least

\$118,090,074. EPA has recovered past costs of \$203,249 in a settlement with D.S.C. of Newark Enterprises, Inc., the current owner of the Site. EPA also recovered \$5,799,341.58 from the bankruptcy proceeding of Dana Corporation, a former owner of the Site, in resolution of EPA's Proof of Claim. EPA will incur additional response costs in the future as it continues investigating and remediating the Site.

I. Section 107(f) of CERCLA, 42 U.S.C. § 9607(f), provides for recovery of damages for injuries to, destruction of, or loss of natural resources caused by releases of hazardous substances to the environment. Injured resources may include, but are not limited to, birds, mammals, fish and other wildlife, plants, and their supporting habitats at or near the facilities. CERCLA specifies that the United States, acting through NOAA and DOI, among other agencies, and the State, acting through the New Jersey Department of Environmental Protection, are authorized to act on behalf of the public as trustees of natural resources to recover such damages, as well as the reasonable costs of assessing the injury, destruction, or loss. Under CERCLA and the governing natural resource damage assessment regulations, the measure of damages includes the cost to restore, replace, or acquire the equivalent of the injured natural resources, plus the reasonable costs of assessing the damages. As remedial action has not been completed, the eventual total amount of natural resource damages, including the reasonable costs of assessing the existence and extent of such damages, is unknown. However, applying standardized estimation techniques, the United States presently estimates that the aforementioned natural resource damages at the Site are between \$28 million and \$53 million. The Trustees recovered \$\_\_\_\_\_ from the bankruptcy proceeding of Dana Corporation in resolution of the Trustees' Proof of Claim filed in that proceeding.

J. The United States has reviewed Financial Information and Insurance Information

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submitted by Settling Defendant CDE to determine whether CDE is financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information and Insurance Information, the United States has determined that Settling Defendant CDE has limited financial ability to pay for Natural Resource Damages and response costs incurred and to be incurred at the Site.

K. Settling Defendant CDE is currently seeking to recover insurance proceeds relating to the Site allegedly due under a number of policies written by various insurers. *See Home Insurance Company v. Cornell-Dubilier Electronics, Inc.*, C.A. No. MER-L-5 192-96, MER-L-2773-02, and MER-L463-05 (N.J. Super. Mercer County) (The “New Jersey Coverage Action”). The insurance companies that are named in the litigation New Jersey Coverage Action have denied coverage and have declined to provide a defense or indemnity to CDE with respect to the Site.

L. The United States, the State, and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1367 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over each Settling Defendant CDE. Solely for the purposes of this Consent Decree and the underlying complaints, CDE Settling Defendants waives all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. CDE Settling Defendants



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consents to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

### **III. PARTIES BOUND**

2. This Consent Decree is binding upon the United States and the State, and upon Settling Defendants and their its successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of CDE Settling Defendants under this Consent Decree.

### **IV. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "Allstate Settlement" shall mean the Settlement Agreement entered into by CDE, Federal Pacific Electric Company ("FPE"), and Allstate Insurance Company ("Allstate"), signed by Allstate on January 19, 2005, resolving CDE and FPE's claims in connection with the Site under certain insurance policies issued by a predecessor in interest of Allstate, Northbrook Insurance Company.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

c. "Consent Decree" or "Decree" shall mean this Consent Decree and all appendices attached hereto (listed in Section XVIII). In the event of conflict between the body of this

Consent Decree and any appendix, the body of this Consent Decree shall control.

d. The term “day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

e. “DOI” shall mean the United States Department of the Interior and any successor departments, agencies or instrumentalities of the United States.

f. “DOJ” shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

g. “Effective Date” shall be the date upon which this Consent Decree is entered by the Court as recorded on the Court docket, or, if the Court instead issues an order approving the

Consent Decree, the date such order is recorded on the Court docket.

**Comment [A1]:** WHAT HAPPENS IF THERE IS AN APPEAL TO THE ENTRY OF THE CONSENT DECREE BY AN OBJECTOR?

h. “EPA” shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

i. “EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

j. “Financial Information” shall mean those financial documents identified in Appendix B.

k. “Insurance Claims” shall mean those causes of action asserted, or which may be asserted, by Settling Defendants CDE and/or FPE against insurance companies pursuant to the terms of insurance contracts, and related agreements, for defense, indemnification, and bad faith in connection with: for (1) Settling Defendants’ litigation expenses and liability to Plaintiffs for Plaintiffs’ claims concerning the Site; and (2) Settling Defendants’ litigation expenses and liability any other environmental matter for which CDE submitted to any of its

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general liability insurers a claim prior to the Effective Date of this Consent Decree, to Plaintiffs for Plaintiffs' claims concerning the Site along with other sites. The Insurance Claims shall include all claims by CDE and/or FPE in the New Jersey Coverage Action, including without limitation claims for defense, indemnity, and bad faith the matter of *Home Insurance Company v. Cornell-Dubilier Electronics, Inc.*, C.A. No. MER-L-5192-96, and for penalties or damages based upon bad faith conduct by any of the insurance companies named in that matter. The Insurance Claims shall also include claims asserted by Settling Defendant CDE against insolvent insurers in any insolvency proceeding, including insolvency proceedings against Home Insurance Company and insolvent London Market Insurers.

l. "Insurance Information" shall mean those insurance documents identified in Appendix C.

m. "Insurance Proceeds" shall mean any money recovered by or on behalf of Settling Defendants CDE after the date CDE submits to the United States its signature page to this Consent Decree which money has been recovered in connection with any of the Insurance Claims and/or FPE, or to be paid to or on behalf of Settling Defendants CDE and/or FPE, under any insurance policies issued to CDE and/or FPE or under which CDE and/or FPE has claimed coverage with respect to alleged environmental liabilities, including (i) those arising at or with respect to the Site; and (ii) those arising with respect to the Site along with other sites, and without regard to whether the money has been or will be paid as a result of a judgment, court order, settlement or other agreement, including a multi-site settlement or policy buyback. Insurance Proceeds shall include any money recovered in the matter of *Home Insurance Company v. Cornell-Dubilier Electronics, Inc.*, C.A. No. MER-L-5192-96, including, but not limited to, money recovered for attorneys fees, or penalties or damages based upon bad faith conduct by any of the insurance

| companies, named in that matter.

n. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

o. "Natural Resource Damages" shall mean damages recoverable pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, for injury to, destruction of, or loss of natural resources at the Site including, but not limited to, costs of assessment and costs of restoring, replacing or acquiring the equivalent of injured or lost natural resources.

p. "NOAA" shall mean the National Oceanic and Atmospheric Administration and any successor departments, agencies or instrumentalities of the United States.

q. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

| r. "Parties" shall mean the United States, the State, and Settling Defendants CDE.

s. "Plaintiffs" shall mean the United States on behalf of EPA, NOAA and DOI, and the State.

t. "RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. § 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

u. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

| v. "Settling Defendants" shall mean Cornell-Dubilier Electronics, Inc. ("CDE") and Federal Pacific Electric Company ("FPE").

w. "Site" shall mean the Cornell-Dubilier Electronics Superfund Site, encompassing

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approximately 26 acres, located in South Plainfield, Middlesex County, New Jersey, and generally shown on the map that is Appendix A. The Site shall include all areas where hazardous substances originating from operations conducted by CDE at the facility on the Site have migrated, but shall not include the Dismal Swamp Site in South Plainfield, New Jersey.

x. "State" shall mean the State of New Jersey.

y. "State Response Costs" shall mean all costs incurred or to be incurred by the State or its political subdivisions or their agents or any person with written approval from the State at or in connection with the Site and in the (i) removal or attempted removal of hazardous substances, or (ii) taking of reasonable measures to prevent or mitigate damage to the public health, safety or welfare, including but not limited to public or private property, including wildlife and other natural resources, and shall include costs incurred by the State for the indemnification and legal defense of contractors pursuant to Sections 1 through 11 of P.L. 1991, c. 373 (C.58:10-23.1 1f(8) through 58:10-23.1 1f(19)), pursuant to N.J.S.A. 58:10-23.1 1b, but not including amounts reimbursed to the State by EPA.

z. "Trustees" shall mean the trustees for natural resources at the Site, including DOI, NOAA, and the New Jersey Department of Environmental Protection.

aa. "United States" shall mean the United States of America, and each department, agency, and instrumentality of the United States, which includes without limitation EPA, and the Federal Trustees.

## **V. GENERAL PROVISIONS**

4. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the implementation of response actions at the Site, to reimburse response costs of the Plaintiffs, and to resolve the claims of the Plaintiffs

against Settling Defendants as provided in this Consent Decree.

5. Commitment by Settling Defendants CDE

Settling DefendantCDEs shall reimburse the Plaintiffs for their response costs and pay Natural Resource Damages, but only to the extent as provided in this Consent Decree.

**VI. JUDGMENT**

6. Settling Defendants CDE hereby stipulates to their liability to the United States and the State for claims asserted in the Complaints in this consolidated action under Section 107 of CERCLA, and under, *inter alia*, the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 *et seq.* in the amount of \$ \_\_\_\_ [80%] of (\$320M plus NRD amount)].

7. With respect to the claims asserted by the United States, judgment is hereby entered against CDE and FPE in the amount of \$ \_\_\_,000,000.00, of which \$ \_\_\_,000,000.00 is for EPA's response costs, incurred and to be incurred, at the Site; and \$ \_\_\_,000,000.00 is for Natural Resource Damages. The United States can recover on satisfy this judgment only in the manner and to the extent provided in this Consent Decree.

8. With respect to the claims asserted by the State, judgment is hereby entered against CDE and FPE in the amount of \$ \_\_\_\_ [10% of \$ \_\_\_, [80% of (\$320M plus NRD amount)]] of which \$ \_\_\_\_ is for State Response Costs at the Site and \$ \_\_\_\_ is for Natural Resource Damages. The State can recover on satisfy this judgment only in the manner and to the extent provided in this Consent Decree.

9. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States, the State, and Settling DefendantCDEs.

**VII. INSURANCE CLAIMS**

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10. Settling Defendant CDE shall use best efforts, including, but not limited to, litigation, to maximize the Insurance Proceeds it recovers under the policies identified in Appendix E or any other policies with potential coverage of environmental claims made against CDE relating to the Site and the Site along with other sites, including all such claims that are the subject of *Home Insurance Company v. Cornell-Dubilier Electronics, Inc.*, C.A. No. MER-L5 192-96.<sup>4</sup>

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10.11. a. No later than five (5) days after the lodging of this Consent Decree, if CDE and/or FPE has~~ve~~ not already done so, CDE and/or FPE shall provide notice of this Consent Decree to each of the insurance companies against which CDE and/or FPE has asserted a claim under the policies identified in Appendix E.

b. No later than ten (10) days after the Effective Date, if Settling Defendants CDE and/or FPE has~~ve~~ not already done so, CDE and/or FPE shall submit a written demand for payment of the amounts required under Paragraphs 7 and 8 of this Consent Decree (or the policy limits, whichever is lower) under each insurance policy identified in Appendix E.

11.12. a. Within fourteen (14) days of submitting to the United States its executed signature page to this Consent Decree after the Effective Date, Settling Defendant CDE shall deposit \$1,00250,000.00 into an interest-bearing escrow account, to be held solely for the purposes of making payments to satisfying CDE's litigation future expenses of litigating in prosecuting the Insurance Claims, paying any escrow expenses, and paying any taxes on the escrow account. claims that are the subject of *Home Insurance Company v. Cornell-Dubilier Electronics, Inc.*, C.A. No. MER-L-5 192-96. CDE . CDE shall make subsequent deposits to the escrow account of \$1,000,000.00 on the first and second anniversaries of the Effective Date of this Consent Decree, *provided however*, that if any withdrawal reduces the balance of the escrow

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account to below \$100,000.00, then no later than twenty (230) days after such withdrawal CDE shall deposit into the escrow account additional funds sufficient to bring the escrow account balance up to at least \$200,000.00. The amounts of any such deposits made to replenish the escrow account may be deducted from the next annual payment due pursuant to this Paragraph 12.a. CDE shall continue funding the escrow account in accordance with the procedures set forth in this Paragraph 12.a and in Paragraph 12.b hereof until such time as CDE's deposits s to the escrow account have totaled \$3.25 million.

b. CDE shall make the deposits to the escrow account required by Paragraph 12.a even if the Insurance Cclaims that are the subject of *Home Insurance Company v. Cornell-Dubilier Electronics, Inc.*, C.A. No. MER-L-5 192-96 have been resolved, *provided, however*, that if additional deposits are due pursuant to the terms of Paragraph 12.a and all of the claims that are the subject of *Home Insurance Company v. Cornell-Dubilier Electronics, Inc.*, C.A. No. MERL-5 192-96 have been fully resolved, such additional deposits shall be prepaid into the escrow account upon such resolution. . To the extent that Thereafter, any funds remain in the escrow account after the resolution of all Insurance Claims and after the Effective Date, those funds, after all required deposits, shall not revert to CDE but shall be included in the sums shall be considered Insurance Proceeds subject to the distributions prescribed under the terms of Section VIII hereof.

a. The escrow agent of the escrow account shall be selected by CDE but shall be subject to approval by EPA. CDE shall pay the expenses of the escrow account, including, but not limited to, the initial\_

d. c. acceptance fee, administration fees, legal expenses, transaction fees, taxes, tax filing fees and other miscellaneous expenses. Other than as set forth in Paragraph 12.a, no funds

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may be withdrawn from the escrow account. The escrow account shall be established in accordance with the escrow agreement attached as Appendix F to this Consent Decree.

d. If after the Effective Date the Insurance Cclaims that are the subject of *Home Insurance Company v. CornellDubilier Electronics, Inc.*, C.A. No. MER-L-5192-96 remain unresolved after the Effective Date and the \$3.25 million has been fully utilized in the litigationprosecution of such claims, litigation of those claims shall thereafter be carried out on behalf of CDE by counsel pursuant to a contingent fee arrangement consistent with this Consent Decree. Such arrangement shall provide for “best efforts” toward the continued litigation of the claims that are the subject of the New Jersey Coverage Action*Home Insurance Company v. Cornell-Dubilier Electronics, Inc.*, C.A. No. MER-L-5 192-96 \_until resolution, whether through trial and appeal(s), if necessary, or settlement.

e. The contingent fee agreement between CDE and counsel for the continued litigation of the Insurance Cclaims that are the subject of *Home Insurance Company v. Cornell-Dubilier Electronics, Inc.*, C.A. No. MER-L-5192-96 shall be subject to approval by the United States.

13. CDE shall provide the United States with a quarterly written report describing the status of the Insurance Claims and the efforts that CDE has made during that quarter to secure Insurance Proceeds and the extent to which it has or has not been successful in seeking to recover Insurance Proceeds during that quarter. Such reports will include copies of any filings, transcripts, or rulings in litigation undertaken by CDE in order to recover Insurance Proceeds. The first report will be due thirty (30) days after the Effective Date and reports will be required until CDE and FPE provides a written certification that they are not aware of any other insurance policies with potential coverage of claims related to the Site and that all Insurance Claims

are have been resolved.

14. CDE and/or FPE shall provide the United States with written notice of any Insurance Proceeds payable to Settling Defendants CDE or FPE within ten (10) days of receipt of notice of such payments, including copies of any correspondence or written information received from any insurance company or Exxon regarding any amounts that will be paid to or on behalf of Settling Defendants CDE and/or FPE.

#### **VIII. PAYMENTS**

##### **15. CDE - Payments to the United States and the State**

a. In addition to the payments required under Paragraph 16, and pursuant to the procedures set forth in Paragraph 20.a, Settling Defendant CDE shall make three payments of \$225,000345,000 each to the United States. CDE shall make the first payment within thirty (30) days after the Effective Date, shall make the second payment 365 days after the Effective Date, and shall make the third payment 730 days after the Effective Date. CDE shall pay Interest on each such payment, calculated from the date of lodging of this Consent Decree through the date of payment of the amounts specified in this Paragraph 15.a.

b. In addition to the payments required under Paragraph 17, and pursuant to the procedures set forth in Paragraph 22, Settling Defendant CDE shall make three payments of \$25,00038,333 each to the State. CDE shall make the first payment within thirty (30) days after the Effective Date, and shall make the second and third payments on the first and second anniversaries of the Effective Date. CDE shall pay Interest on each such payment calculated from the date of lodging of this Consent Decree through the date of payment of the amounts specified in this Paragraph 15.b.

##### **16. CDE and FPE - Payments to the United States**

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After the Effective Date and in full satisfaction of the Judgment amount set forth in Paragraph 7 (but without affecting the deposits required pursuant to Paragraph 12 and the payments required pursuant to Paragraph 15.a), Settling Defendants CDE and FPE shall pay to the United States, within twenty (20) days of receipt, and pursuant to the procedures set forth in Paragraph 21:

a. 90% of the Insurance Proceeds recovered under the Allstate Settlement;

b. 90% of the first \$4 million in Insurance Proceeds excluding sums recovered under the Allstate Settlement recovered from a settlement or judgment resolving claims asserted (but not including any settlement or judgment in *Home Insurance Company v. Cornell-Dubilier Electronics, Inc.*, C.A. No. MER-L-5192-96) in a matter in which funds are recovered by CDE and/or FPE based upon coverage for alleged environmental liabilities relating only to the Site;

c. 72% of any other Insurance Proceeds from a settlement or judgment resolving claims asserted (but not including any settlement or judgment in *Home Insurance Company v. Cornell-Dubilier Electronics, Inc.*, C.A. No. MER-L-5 192-96) in a matter in which funds are recovered by CDE and/or FPE based upon coverage for alleged environmental liabilities at two or more sites, including the Site; and

d. The following portions of the Insurance Proceeds recovered as a result of a settlement or judgment resolving claims asserted in *Home Insurance Company v. Cornell-Dubilier Electronics, Inc.*, C.A. No. MER-L-5192-96:

90% of any recovery of Insurance Proceeds up to and including \$4,000,000.00;

plus

73.870% of any recovery of Insurance Proceeds exceeding \$4,000,000.00 up to and

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including \$20,000,000.00; plus

d. 69.368% of any recovery of Insurance Proceeds exceeding \$20,000,000.00 up to  
and including \$50,000,000.00; plus

e. 73.869% of any recovery of Insurance Proceeds exceeding \$50,000,000.00 up  
to and including \$75,000,000; plus

f. 754.6% of any recovery of Insurance Proceeds exceeding \$75,000,000.00 up to and  
including \$100,000,000.00; plus

g. 76.5% of any recovery of Insurance Proceeds exceeding  
\$1\$100,000,000.00.

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17. CDE and FPE - Payments to the State

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After the Effective Date and In full satisfaction of the Judgment amount set forth in  
Paragraph 8 (but not including the deposits required pursuant to Paragraph 12 and the payments  
required pursuant to Paragraph 15.b), Settling Defendants CDE and FPE shall pay to the  
State, within twenty (20) days of receipt, and pursuant to the procedures set forth in Paragraph  
22:

a. 10% of the Insurance Proceeds recovered under the Allstate Settlement;

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b. 10% of the first \$4 million in Insurance Proceeds excluding sums recovered

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under the Allstate Settlement;

c. 6.50% of any recovery of Insurance Proceeds exceeding \$4,000,000.00 up to  
and including \$20,000,000.00; plus

d. 6.00% of any recovery of Insurance Proceeds exceeding \$20,000,000.00 up to  
and including \$50,000,000.00; plus

e. 6.25% of any recovery of Insurance Proceeds exceeding \$50,000,000.00

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up to and including \$75,000,000; plus

f. 8.00% of any recovery of Insurance Proceeds exceeding \$75,000,000.00 up to and including \$100,000,000.00; plus

g. 8.25% of any recovery of Insurance Proceeds exceeding \$100,000,000.00.

a. 10% of the Insurance Proceeds recovered under the Allstate Settlement;

b. 10% of the Insurance Proceeds recovered from any other settlement or judgment resolving claims asserted (but not including any settlement or judgment in *Home Insurance Company v. Cornell-Dubilier Electronics, Inc.*, C.A. No. MER-L-5 192-96) in a matter in which funds are recovered by CDE and/or FPE based upon coverage for alleged environmental liabilities relating only to the Site;

c. 8% of the Insurance Proceeds from any other settlement or judgment resolving claims asserted (but not including any settlement or judgment in *Home Insurance Company v. Cornell-Dubilier Electronics, Inc.*, C.A. No. MER-L-5 192-96) in a matter in which funds are recovered by CDE and/or FPE based upon coverage for alleged environmental liabilities at two or more sites, including the Site; and

d. The following portions of the Insurance Proceeds recovered as a result of a settlement or judgment resolving claims asserted in *Home Insurance Company v. CornellDubilier Electronics, Inc.*, C.A. No. MER-L-5192-96:

10% of any recovery of Insurance Proceeds up to and including \$4,000,000.00; plus

8.2% of any recovery of Insurance Proceeds exceeding \$4,000,000.00 up to and

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including \$20,000,000.00; plus

7.7% of any recovery of Insurance Proceeds exceeding \$20,000,000.00 up to and

including \$50,000,000.00; plus

8.2% of any recovery of Insurance Proceeds exceeding \$50,000,000.00 up to and

including \$75,000,000.00; plus

8.4% of any recovery of Insurance Proceeds exceeding \$75,000,000.00 up to and

including \$100,000,000.00; plus

8.5% of any recovery of Insurance Proceeds exceeding \$100,000,000.00.

18. a. Successive recoveries of Insurance Proceeds shall be cumulated for purposes of Paragraphs 16.d and 17.d.

b. Any Insurance Proceeds remaining after payment in accordance with Paragraphs 16 and 17 shall be placed by Settling Defendant CDE in an interest bearing escrow account. Funds in this escrow account shall be used by CDE solely for the purposes of defending and/or resolving present or future CERCLAenvironmental claims, paying brought by any federal, state, or local government entity against CDE, other than at the Site. CDE shall have the right to pay any tax preparation fees or any tax due on any interest earned in the escrow account from the escrow account, and/or paying any escrow fees..

19. In addition to the Interest due on payments by CDE pursuant to Paragraph 23, CDE shall pay additional Interest on its payment amounts due pursuant to Paragraph 15 calculated as follows:

a.if CDE and FPE execute and return this Consent Decree to the United States on or before [INSERT DATE APPROX. 2 WEEKS AFTER FINAL VERSION IS SENT TO SETTLING DEFENDANTS FOR SIGNATURE], no additional Interest shall accrue;

b.if CDE and FPE execute and return this Consent Decree to the United States after

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[SAME DATE], additional Interest shall be paid calculated from [SAME DATE] until the date of lodging of this Consent Decree. CDE and FPE shall make any payment required by this Paragraph 19 pursuant to the procedures set forth in Paragraph 20.a.

20. Instructions for All Payments to the United States by Settling Defendants

a. Any payments by Settling Defendants CDE to the United States required under this Consent Decree which are less than \$9.9 million shall be made at <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with instructions provided to Settling Defendants CDE by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the District of New Jersey after the Effective Date. Any payments to the United States exceeding \$9.9 million may be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with current EFT procedures, and in accordance with instructions provided to Settling Defendants CDE by the FLU after the Effective Date. The FLU shall provide the payment instructions to: [Insert name, address, phone number and email address of the individuals who will be responsible for making the payments] on behalf of each Settling Defendant CDE. A Settling Defendant CDE may change the individual to receive payment instructions on its behalf by providing written notice of such change in accordance with Section XVI (Notices and Submissions).

b. The payment instructions provided by the FLU shall include a Consolidated Debt Collection System (“CDCS”) number. All payments to the United States by Settling Defendants CDE shall reference the CDCS Number, EPA Site/Spill ID Number 02-GZ and DOJ Case Number 90-11-2-08223/2. [Trustees to provide any specific payment details they require].

c. At the time of any payment to the United States, Settling Defendants CDE shall send notice to the United States and EPA in accordance with Section XVI (Notices and

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Submissions), and to the EPA Cincinnati Finance Office by email at [acctsreceivable.cinwd@epa.gov](mailto:acctsreceivable.cinwd@epa.gov), or by mail at 26 Martin Luther King Drive, Cincinnati, Ohio 45268. Such notice shall also reference the CDCS Number, Site/Spill ID Number 02-GZ, and DOJ Case Number 90-11-2-08223/2.

d. Any payment received after 4:00 p.m. Eastern Time shall be credited on the next business day.

21. Application of Payments to the United States Upon receipt of payments to the United States under this Consent Decree, the United States shall apply the funds as follows: (i) [EPA percentage] shall be deposited in the Cornell-Dubilier Electronics Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund; (ii) [FWS percentage] shall be deposited in a Site-specific sub-account within DOI's Natural Resource Damage Assessment and Restoration Fund; and (iii) [NOAA percentage] shall be deposited in NOAA's Damage Assessment and Restoration Revolving Fund.

22. Instructions for All Payments to the State Payments to be made to the State under this Consent Decree shall be in the form of a certified or cashier's check. The check shall be made payable to "Treasurer, State of New Jersey" and shall reference *State of New Jersey v. Cornell-Dubilier Electronics, Inc. et al.* The check shall be sent to:

Attn: Section Chief  
Hazardous Site Litigation Section  
Division of Law  
Richard J. Hughes Justice Complex  
25 Market Street  
Post Office Box 093  
Trenton, New Jersey 08625-0093



**IX. FAILURE TO COMPLY WITH CONSENT DECREE**

23. Interest on Late Payments If any Settling Defendant CDE fails to make any payment to the United States or the State under Section VIII by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

24. Stipulated Penalty

a. If any amounts due under Section VIII are not paid by the required date, CDE the Settling Defendant which has not made the payment by the required date shall be in violation of this Consent Decree and shall pay to the United States, as a stipulated penalty, in addition to the Interest required by Paragraph 23, 1% of the amount of the late payment per day that such payment is late.

b. If any amounts due to the State under Section VIII are not paid by the required date, the Settling Defendant which has not made the payment by the required date CDE shall be in violation of this Consent Decree and shall pay to the State, as a stipulated penalty, in addition to the Interest required by Paragraph 23, 0.5% of the amount of the late payment per day that such payment is late.

c. If a Settling Defendant CDE does not comply with Section XIV (Access to Information) or Section XV (Retention of Records and Certification), that Settling Defendant CDE shall be in violation of this Consent Decree and shall pay to the United States, as a stipulated penalty, \$750 per violation per day of such noncompliance.

d. If a Settling Defendant CDE does not comply with Section XIV (Access to Information) or Section XV (Retention of Records and Certification), that Settling Defendant CDE shall be in violation of this Consent Decree and shall pay to the State, as a stipulated penalty, \$375 per violation per day of such noncompliance.

e. If CDE does not comply with the requirements of Section VII (Insurance Claims), CDE shall be in violation of this Consent Decree and shall pay to the United States, as a stipulated penalty, \$1500 per violation per day of such noncompliance.

f. If CDE does not comply with the requirements of Section VII (Insurance Claims), CDE shall be in violation of this Consent Decree and shall pay to the State, as a stipulated penalty, \$750 per violation per day of such noncompliance.

g. Stipulated penalties are due and payable within thirty (30) days of the date of the demand for payment of the penalties by the United States or the State.

h. All payments to the United States under this Paragraph shall be made in accordance with the procedures in Paragraph 21 and in addition, shall be identified as “stipulated penalties.”

i. All payments to the State under this Paragraph shall be made in accordance with the procedures in Paragraph 22 and in addition, shall be identified as “stipulated penalties.”

j. Penalties shall accrue as provided in this Paragraph regardless of whether EPA or the State has notified the Settling Defendant(s) of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

25. If the United States or the State brings an successful action to enforce this Consent Decree, the Settling Defendant(s) whose actions result in the need for such enforcement CDE shall reimburse the United States and the State for all costs of such action, including but not limited to costs of attorney time.

26. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiffs by virtue of any Settling Defendant CDE's failure to comply with the requirements of this Consent Decree.

27. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section VIII (Payments) or from performance of any other requirements of this Consent Decree.

#### **X. COVENANTS NOT TO SUE BY PLAINTIFFS**

28. **United States.** In consideration of the payments that will be made by Settling Defendants CDE under the terms of this Consent Decree and except as specifically provided in Section XI (Reservation of Rights by Plaintiffs), the United States covenants not to sue or to take administrative action against CDE and its corporate affiliates, including Federal Pacific Electric Company, Settling Defendants pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a), with regard to the Site. With respect to present and future liability, these covenants shall take effect upon receipt by EPA and the Trustees of all payments required by Section VIII (Payments) and any Interest or Stipulated Penalties due thereon under Section IX (Failure to Comply with Consent Decree). These covenants not to sue are conditioned upon the satisfactory performance by CDE Settling Defendants of its their obligations under this Consent Decree, including but not limited to, payment of all amounts due under Section VIII (Payments) including any conditional payment obligations, all obligations of Section VII (Insurance Claims), and payment of any Interest or stipulated penalties due thereon under Section IX (Failure to Comply with Consent Decree). These covenants not to sue are further conditioned

**Comment [A2]:** WHAT ABOUT RELEASE OF CONTRIBUTION CLAIM BY FEDERAL PRPS??

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on the veracity and completeness of the certification made by each Settling Defendant CDE in Paragraph 45. If the certification made by a Settling Defendant CDE in Paragraph 45 is subsequently determined by EPA to be false or, in any material respect, false or inaccurate, that Settling Defendant CDE shall forfeit all payments made pursuant to this Consent Decree and these covenants not to sue and the contribution protection in Paragraph 37 shall be null and void as to that Settling Defendant. CDE's covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information and the Insurance Information provided to EPA by CDE. If the Financial Information or the Insurance Information provided by CDE is subsequently determined by EPA to be false or, in any material respect, false or inaccurate, CDE shall forfeit all payments made pursuant to this Consent Decree and these covenants not to sue and the contribution protection in Paragraph 37 shall be null and void as to CDE. Forfeiture of payments pursuant to this Paragraph 28 shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from Settling Defendants CDE's false or materially false or inaccurate information. These covenants not to sue extend only to Settling Defendants CDE and its past and present corporate affiliates, including Federal Pacific Electric Company, and do not extend to any other person. Notwithstanding anything else in this Consent Decree, the covenant not to sue CDE's corporate affiliates only extends to the potential derivative liability of said corporate affiliates but does not extend to liability in connection with the Site which that is the result of the consequences of the acts or omissions of any corporate affiliate unless they were known, agreed to or participated in by CDE, its directors, officers, or employees.

29. State of New Jersey In consideration of the payments that will be made by Settling Defendants CDE under the terms of this Consent Decree and except as specifically

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provided in Section XI (Reservation of Rights by Plaintiffs), the State covenants not to sue or to take administrative action against Settling Defendants CDE and its corporate affiliates, including Federal Pacific Electric Company, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 *et seq.*, the Industrial Site Recovery Act, N.J. S.A. 13:1 K-6 *et seq.*, and the common law of

nuisance, negligence and strict liability, with regard to the Site. With respect to present and future liability, this covenant shall take effect upon receipt by the State of all payments to the State required by Section VIII (Payments) and any amount due under Section IX (Failure to Comply with Consent Decree). These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants CDE of their obligations under this Consent Decree, including but not limited to, payment of all amounts due under Section VIII (Payments), including any conditional payment obligations, and all obligations of Section VII (Insurance Claims), and any Interest or stipulated penalties due thereon under Section IX (Failure to Comply with Consent Decree). These covenants not to sue are further conditioned on the veracity and completeness of the certification made by Settling Defendants CDE in Paragraph 45. If the certification made by Settling Defendants in Paragraph 45 is subsequently determined by EPA to be false or, in any material respect, inaccurate, Settling Defendants shall forfeit all payments made pursuant to this Consent Decree and these covenants not to sue and the contribution protection in Paragraph 37 shall be null and void. CDE's covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information and the Insurance Information provided to EPA by CDE. If the Financial Information or the Insurance Information provided by CDE is subsequently determined by EPA to be false or, in any material respect, inaccurate, Settling Defendants shall forfeit all payments made pursuant to this Consent Decree and these covenants not to sue and the contribution protection in Paragraph 37 shall be null and void. Forfeiture of payments pursuant to this Paragraph 29 shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from

Settling Defendants' false or materially inaccurate information. These covenants not to sue extend only to Settling Defendants and do not extend to any other person. Notwithstanding anything else in this Consent Decree, the covenant not to sue CDE's corporate affiliates only extends to the potential derivative liability of said corporate affiliates but does not extend to liability in connection with the Site that is the result of the consequences of the acts or omissions of any corporate affiliate unless they were known, agreed to or participated in by CDE, its directors, officers, or employees. These covenants not to sue extend only to CDE and its corporate affiliates, including Federal Pacific Electric Company, and do not extend to any other person. The covenant not to sue CDE's corporate affiliates only extends to the potential derivative liability of said corporate affiliates but does not extend to liability in connection with the Site which is the result of consequences of the acts or omissions of any corporate affiliate unless they were known, agreed to or participated in by CDE, its directors, officers, or employees.

#### **XI. RESERVATION OF RIGHTS BY PLAINTIFFS**

30. The covenants set forth in Section X above do not pertain to any matters other than those expressly specified in Paragraphs 28 and 29. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants CDE with respect to all other matters, including but not limited to, the following:

- a. liability based on a failure by a Settling Defendant CDE to meet a requirement of this Consent Decree;
- b. criminal liability of CDE;
- c. liability based on the ownership or operation of the Site by a Settling Defendant CDE when such ownership or operation commences after signature of this Consent

Decree;

d. liability based on a Settling Defendant CDE's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of hazardous substances, pollutants, or contaminants at or in connection with the Site, after signature of this Consent Decree;

e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site but not originating at or from the Site.

31. Notwithstanding any other provision of this Consent Decree, EPA, the Federal Trustees and the State reserve, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as



provided in this Consent Decree, if the Financial Information or the Insurance Information provided by a Settling Defendant CDE, or the certification made by a Settling Defendant CDE pursuant to Paragraph 45, is false or, in any material respect, false or inaccurate.

**XII. COVENANTS NOT TO SUE BY  
SETTLING DEFENDANTS**

32. Each Settling Defendant CDE covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State, or their contractors or employees, with respect to the Site and this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law; or

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the New Jersey Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

33. Except as provided in Paragraph 35 and Paragraph 39, these covenants not to sue shall not apply in the event the United States or the State brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XI (Reservations of Rights by Plaintiffs), other than in Paragraph 30.a (claims for failure to meet a requirement of the Consent Decree) or 30.b (criminal liability), but only to the extent that Settling Defendant CDE's' claims arise from the same response action or response costs that the United States or the State is seeking

pursuant to the applicable reservation.

34. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

35. Settling Defendants CDE agrees not to assert any claims and to waive all claims and causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for all matters relating to the Site, against each other or any other person who is a potentially responsible party under CERCLA. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant CDE may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant CDE.

### **XIII. EFFECT OF SETTLEMENT/CONTRIBUTION**

36. Except as provided in Paragraph 35 and Paragraph 39, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 35 and Paragraph 39, each of the Parties expressly reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. 9613 § (f)(2)-(3), to pursue any such persons to obtain additional response costs or response action or to enter into

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settlements that give rise to contribution protection pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2). Nothing in this Consent Decree is intended to limit or otherwise restrict CDE's rights to recoup from its insurers or any indemnitor of its insurers any of the sums CDE is paying or liability to which it is stipulating pursuant to this Consent Decree.

37. The Parties agree, and by entering this Consent Decree this Court finds, that this settlement constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling Defendants are CDE and its corporate affiliates are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, and all natural resource damages, at or in connection with the Site, by the United States, the State or any other person; *provided, however*, that if the United States or the State exercises rights under the reservations in Section XI (Reservation of Rights by Plaintiffs), other than in Paragraphs 30.a (claims for failure to meet a requirement of the Decree) or 30.b (criminal liability), the “matters addressed” in this Consent Decree will no longer include those response costs or response actions or natural resource damages that are within the scope of the exercised reservation.

Each Settling Defendant CDE shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify EPA and DOJ and the State in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant CDE shall, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, notify EPA and DOJ and the State in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Defendants CDE shall notify EPA and DOJ and the State within 10 days of

service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

39. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants CDE shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; *provided, however*, that nothing in this Paragraph affects the enforceability of the Covenants by Plaintiffs set forth in Section X.

#### **XIV. ACCESS TO INFORMATION**

40. Settling Defendants CDE shall provide to EPA and the State, upon request, copies of all records, reports, or information (hereinafter referred to as “Records”) within their possession or control or that of their contractors or agents relating to historical activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

##### **41. Confidential Business Information and Privileged Documents.**

a. A Settling Defendant CDE may assert business confidentiality claims covering part or all of the Records submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R.

2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA or the State, or if EPA has notified Settling Defendant CDE that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to the Settling Defendant.

b. A Settling Defendant CDE may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If a Settling Defendant CDE asserts such a privilege in lieu of providing records, it shall provide Plaintiffs with the following: 1) the title of the Record; 2) the date of the Record; 3) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the Record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the United States in redacted form to mask the privileged portion only. Settling Defendants CDE shall retain all Records that they it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Defendants' CDE's favor. However, no Records created or generated pursuant to the requirements of this or any other settlement with the United States or the State pertaining to the Site shall be withheld on the grounds that they are privileged or confidential.

42. No claim of confidentiality or privilege shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific,

chemical, or engineering data, or any other records evidencing conditions at or around the Site.

**XV. RETENTION OF RECORDS AND CERTIFICATION**

43. Until 10 years after the entry of this Consent Decree, each Settling Defendant CDE shall preserve and retain all non-identical copies of Records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

44. After the conclusion of the document retention period in the preceding Paragraph, each Settling Defendant CDE shall notify EPA, DOJ and the State at least 90 days prior to the destruction of any such Records, and, upon request by EPA or DOJ or the State, the Settling Defendant CDE shall deliver any such Records to EPA or the State. The Settling Defendant CDE may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendant CDE asserts such a privilege, it shall provide Plaintiffs with the following: 1) the title of the Record; 2) the date of the Record; 3) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the Record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the United States in redacted form to mask the privileged portion only. The Settling Defendants CDE shall retain all Records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Defendants' CDE's favor. However, no records created or generated pursuant

to the requirements of this or any other settlement with the United States or the State shall be withheld on the grounds that they are privileged.

45. Certifications

a. Each Settling Defendant CDE hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any Records (other than non-identical copies) relating to its potential liability regarding the Site since the earlier of notification of potential liability by the United States or the State or the filing of suit against it regarding the Site, and that it has fully complied with any and all EPA and State requests for information regarding the Site and Settling Defendant CDE's financial circumstances, including but not limited to Insurance Information and indemnification information, pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), Section 3007 of RCRA, 42 U.S.C. § 6927 and State law;

b. CDE hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has submitted to EPA financial information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the financial information was submitted to EPA and the time the Settling Defendant executes this Consent Decree;

c. CDE hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has fully disclosed any information regarding the existence of, and payments due under, any insurance policies or indemnity agreements that may cover claims relating to its liability at the Site, and submitted to EPA such insurance policies, indemnity agreements, and

information.

**XVI. NOTICES AND SUBMISSIONS**

46. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, the State, and Settling Defendants CDE, respectively.

*As to the United States:*

As to DOJ:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044-7611

Re: DOJ Number 90-11-2-08223/2

As to EPA:

Cornell-Dubilier Electronics Site Remedial Project Manager  
New Jersey Remediation Branch  
United States Environmental Protection Agency  
Region 2, 19th Floor  
290 Broadway  
New York, NY 10007-1866



Cornell-Dubilier Electronics Site Attorney  
Office of Regional Counsel  
United States Environmental Protection Agency  
Region 2, 17th Floor  
290 Broadway  
New York, NY 10007-1866

*As to the State:*

Insert name and address of State contact

*As to Settling Defendants:*

Cornell-Dubilier Electronics, Inc.

[Insert name and address] Robert S. Sanoff  
Jonathan M. Ettinger  
Foley Hoag LLP  
155 Seaport Blvd  
Boston, MA 02210

Federal Pacific Electric Company

[Insert name and address]

#### **XVII. RETENTION OF JURISDICTION**

47. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

#### **XVIII. INTEGRATION/APPENDICES**

48. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this

Consent Decree:

“Appendix A” is the map of the Site.

“Appendix B” is a list of the financial documents submitted to EPA by Settling Defendant CDE.

“Appendix C” is the list of insurance documents submitted to EPA by Settling Defendant CDE.

“Appendix D” is [reserved].

“Appendix E” is the list of insurance policies.

“Appendix F” is the Escrow Agreement

#### **XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

49. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

50. If for any reason this Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the sole discretion of any party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

#### **XX. SIGNATORIES/SERVICE**

51. Each undersigned representative of each Settling Defendant to this Consent Decree of CDE, the Acting Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice and [insert State official] certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

52. Each Settling Defendant CDE agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has

notified Settling Defendants CDE in writing that it no longer supports entry of the Consent Decree.

53. Each Settling Defendant CDE shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Each Settling Defendant CDE agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2011

\_\_\_\_\_  
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States and State of New Jersey v. Cornell-Dubilier Electronics, Inc., et al.*, relating to the Cornell-Dubilier Electronics Superfund Site.

FOR THE UNITED STATES OF AMERICA

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IGNACIA MORENO  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

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Trial Attorneys  
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PAUL J. FISHMAN  
United States Attorney

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Assistant U.S. Attorney  
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\_\_\_\_\_  
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U.S. Environmental Protection Agency  
Ariel Rios South (Mail Code: 2272A)  
1200 Pennsylvania Ave, NW  
Washington, DC 20460

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and State of New Jersey v. Cornell-Dubilier Electronics, Inc., et al.*, relating to the CornellDubilier Electronics Superfund Site.

FOR THE STATE OF NEW JERSEY

Date: \_\_\_\_\_

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and State of New Jersey v. Cornell-Dubilier Electronics, Inc., et al.*, relating to the CornellDubilier Electronics Superfund Site.

FOR DEFENDANT CORNELL-DUB  
ILIER ELECTRONICS, INC.

- 44 -

Date: \_\_\_\_\_

\_\_\_\_\_  
XXXX

Address

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: \_\_\_\_\_

Title:



THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and State of New Jersey v. Cornell-Dubilier Electronics, Inc., et al.*, relating to the Cornell-Dubilier Electronics Superfund Site.

FOR DEFENDANT FEDERAL PACIFIC  
ELECTRIC COMPANY

Date: \_\_\_\_\_

\_\_\_\_\_  
Address

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

## APPENDIX A

Map of Site

## APPENDIX B

### **Financial Information Provided by Cornell-Dubilier Electronics, Inc.**

Federal Tax Returns for Kaplan Electronics, Inc. and Subsidiaries, including Cornell-Dubilier Electronics, Inc., for fiscal years ended August 31, 2002 through August 31, 2008

Federal Tax Returns for CDE Holdings, Inc. and Subsidiaries, including Cornell-Dubilier Electronics, Inc., for fiscal years ended August 31, 2008 and August 31, 2009

Internal Revenue Service Auditor's Letter dated January 2006 for fiscal year ended August 31, 2005

IRS Auditor's Report dated August 8, 2007 for fiscal year ended August 31, 2006

Consolidated Financial Reports for Kaplan Electronics, Inc. and Subsidiaries for the fiscal years ended August 31, 2002, 2003, 2005 and 2006

Consolidated Financial Reports for Cornell-Dubilier Electronics, Inc. and Subsidiaries for:  
1) fiscal years ended August 31, 2007 and 2008; and 2) fiscal years ended August 31, 2008 and 2009

Statement of Officer Compensation for Calendar 2006 to 2008 (prepared for EPA by Cornell-Dubilier Electronics, Inc.)

Cornell-Dubilier Electronics, Inc. and Subsidiaries statement of Cash Flows (Unaudited) for fiscal year ending August 31, 2008 and month ending September 30, 2008

Cornell-Dubilier Electronics, Inc. and Subsidiaries Statement of Operations, Balance Sheet and Statement of Cash Flows (Unaudited) for nine months ending May 31, 2006

## APPENDIX C

### **Insurance Information Provided by Cornell-Dubier Electronics, Inc.**

#### Settlement Agreements

Settlement between **Ex. 4 - CBI** and Settling Defendants CDE and FPE, signed by **Ex. 4 - CBI** on June 4, 1996.

Settlement between **Ex. 4 - CBI** and Settling Defendants CDE and FPE, signed by **Ex. 4 - CBI** on September 19, 1997.

Settlement between **Ex. 4 - CBI** and Settling Defendants CDE and FPE, signed by **Ex. 4 - CBI** on December 22, 1997.

Settlement between **Ex. 4 - CBI** and Settling Defendants CDE and FPE, signed by **Ex. 4 - CBI** on July 31, 1998.

Settlement between **Ex. 4 - CBI** and Settling Defendants CDE and FPE, signed by **Ex. 4 - CBI** on October 1, 2002.

Settlement between **Ex. 4 - CBI** and Settling Defendants CDE and FPE, Signed by **Ex. 4 - CBI** on October 7, 2002.

Settlement between **Ex. 4 - CBI** and Settling Defendants CDE and FPE, signed by **Ex. 4 - CBI** on February 7, 2003.

Settlement between **Ex. 4 - CBI** and Settling Defendants CDE and FPE, signed by **Ex. 4 - CBI** on October 22, 2003.

Settlement between **Ex. 4 - CBI** and Settling Defendants CDE and FPE, signed by **Ex. 4 - CBI** on April 2, 2004.

Settlement between **Ex. 4 - CBI** and Settling Defendant CDE, signed by **Ex. 4 - CBI** on May 4, 2004.

Settlement between [Ex. 4 - CBI] and Settling Defendants CDE and FPE, signed by [Ex. 4 - CBI] on May 27, 2004.

Settlement between [Ex. 4 - CBI], and Settling Defendant CDE, signed by [Ex. 4 - CBI] on December 2, 2004.

Settlement between [Ex. 4 - CBI] and Settling Defendants CDE and FPE, signed by [Ex. 4 - CBI] on January 19, 2005.

Letter from Kingscroft Insurance Company Limited, Walbrook Insurance Company Limited, El Paso Insurance Company Limited, Lime Street Insurance Company Limited and Mutual Reinsurance Company Limited (Bermuda) (collectively, "KWELM") to Settling Defendants CDE and FPE, dated February 2, 2005, confirming agreed values of Notified Scheme Claim, with respect to KWELM Scheme of Arrangement.

Letter from Bermuda Fire & Marine Insurance Company Limited ("BFMIC") to Settling Defendants CDE and FPE, dated February 2, 2005, confirming agreed values of Notified Scheme Claim, with respect to BFMIC Scheme of Arrangement.

Settlement between [Ex. 4 - CBI] for obligations of [Ex. 4 - CBI], and Settling Defendant CDE, signed by [Ex. 4 - CBI] on May 13, 2005

Settlement among [Ex. 4 - CBI] and Settling Defendants CDE and FPE, signed by [Ex. 4 - CBI] on February 6, 2008.

Letter from OIC Run-off Limited (formerly The Orion Insurance Company P.L.C.) and the London and Overseas Insurance Company Limited (formerly The London and Overseas Insurance Company P.L.C.) to Settling Defendants CDE and FPE, dated October 7, 2009, advising of payment in respect of Established Liability in Scheme of Arrangement.

Bryanston Ins. Co. Ltd. [Subject to Scheme of Arrangement but no written information provided]

#### Insurance Policies

All insurance policies in effect from 1959 to 1980 issued to Cornell-Dubilier Electronics, Inc., Federal Pacific Electric Company and subsidiaries, UV Industries, Inc. and affiliates, and/or Reliance Electric Company and affiliates, pursuant to which Settling Defendants CDE and FPE have sought and/or are seeking coverage for the Site.

All insurance policies in effect from January 1, 1980 to November 1, 1983 issued to Exxon Corporation by Lloyd's Underwriters and various London Market Insurance Companies as reinsurers, pursuant to which Settling Defendant CDE has sought or is seeking coverage for the Site.

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APPENDIX D

[reserved]

APPENDIX E

**Northbrook Excess and Surplus Insurance Company, formerly Northbrook Insurance Company (Pursuant to Settlement Agreement with Allstate Insurance Company)**

63 002	939	4/1/77 - 4/1/78
63 004	361	4/1/78 - 4/1/79
63 005	851	7/1/79 - 7/1/80
63 005	554	4/1/79 - 4/1/80

**Home Insurance Co.**

HEC	954 3121	7/1/62 - 7/1/65
HEC	954 4303	7/1/65 - 7/1/68
HEC	9544304	??
HEC	9559165	7/1/68 - 7/1/71
HEC	9794317	7/1/71 - 7/1/72

**Continental Casualty Co. (CNA)**

RDX 8936473	7/1/72 - 7/1/75
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**North River Insurance Co.**

JU 0313	4/1/77 - 4/1/78
JU 0506	4/1/78 - 4/1/79

**Wrenford Insurance Co. (reinsured by United Insurance Co.)**

B49027	3/29/79 - 7/1/79
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**Transit Casualty Company**

UMB 950030	7/1/79 - 7/1/80
SCU 955202	7/1/79 - 7/1/80

**Lloyds' Underwriters (and various London Market Insurance Companies as reinsurers):**

CK4294	5/21/59 - 7/1/62
CK4295	5/21/59 - 7/1/62



K56745	5/21/59 - 7/1/62
K56746	5/21/59 - 7/1/62
K56747	5/21/59 - 7/1/62

614/NC5606	3/29/79 - 7/1/79
614/NC5607	3/29/79 - 7/1/79
614/NC5608	3/29/79 - 7/1/79
614/NC7762	3/29/79 - 7/1/79
64/NC7760	3/29/79 - 7/1/79
64/NC7761	3/29/79 - 7/1/79

80BH1799	1/1/08 - 1/1/81
80BH1800	1/1/08 - 1/1/81
80BH1801	1/1/08 - 1/1/81
80BH1802	1/1/08 - 1/1/81
80BH1803	1/1/08 - 1/1/81
80BH1804	1/1/08 - 1/1/81
80BH1805	1/1/08 - 1/1/81
80BH1806	1/1/08 - 1/1/81
80BH1807	1/1/08 - 1/1/81

1HB 14830	1/1/81 - 1/1/82
1HB 14840	1/1/81 - 1/1/82
1HB 14850	1/1/81 - 1/1/82
1HB 14860	1/1/81 - 1/1/82
1HB 14870	1/1/81 - 1/1/82
1HB 14880	1/1/81 - 1/1/82
1HB 14890	1/1/81 - 1/1/82
1HB 14900	1/1/81 - 1/1/82
1HB 14910	1/1/81 - 1/1/82

2KA 16950	1/1/82 - 1/1/83
2KA 16960	1/1/82 - 1/1/83
2KA 16970	1/1/82 - 1/1/83
2KA 16980	1/1/82 - 1/1/83
2KA 16990	1/1/82 - 1/1/83
2KA 17000	1/1/82 - 1/1/83
2KA 17010	1/1/82 - 1/1/83
2KA 17020	1/1/82 - 1/1/83

3KA 06700	11/1/82 - 11/1/83
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3KA 06710	11/1/82 - 11/1/83
3KA 06720	11/1/82 - 11/1/83
3KA 06730	11/1/82 - 11/1/83
3KA 06740	11/1/82 - 11/1/83
3KA 06750	11/1/82 - 11/1/83
3KA 06760	11/1/82 - 11/1/83

**including coverage subject to Schemes of Arrangement for:**

KWELM (Kingscroft Insurance Company Limited; Walbrook Insurance Company Limited; El Paso Insurance Company Limited; Lime Street Insurance Company Limited; and Mutual Reinsurance Company Limited (Bermuda))

Bermuda Fire & Marine Insurance Company Limited

OIC Run-off Limited (formerly The Orion Insurance Company P.L.C.) and the London and Overseas Insurance Company Limited (formerly The London and Overseas Insurance Company P.L.C.)

Bryanstons Insurance Co. Ltd.

## APPENDIX F

Escrow Agreement